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Before the

Federal Communications Commission  
Washington, D.C. 20554 JUN 11 2 54 PM '93

MM Docket No. 92-155

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),	RM-8020
Table of Allotments,	RM-8095
FM Broadcast Stations.	RM-8096
Blair, Nebraska; Ames, Alta,	
Denison, Lake City, Perry, Sac	
City and Storm Lake, Iowa <sup>1</sup>	

# REPORT AND ORDER

Adopted: June 3, 1993;

Released: June 16, 1993

By the Chief, Allocations Branch:

1. At the request of Sunrise Broadcasting of Nebraska, Inc. ("petitioner" or "Sunrise"), the Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, 7 FCC Rcd 4593 (1992), proposing the substitution of Channel 268C3 for Channel 292A at Blair, Nebraska, and the modification of Station KBWH(FM)'s license to specify operation on the higher class channel. To accommodate the allotment of Channel 268C3 to Blair, the *Notice* also proposed the modification of Station KAYL's license by substituting Channel 269C1 for Channel 268C1 at Storm Lake, Iowa, the modification of Station KDLS-FM's license by substituting Channel 286A for Channel 269A at Perry, Iowa, and the substitution of Channel 248A for unoccupied and unapplied for Channel 286A at Sac City, Iowa. Comments were filed by the petitioner, Perry Broadcasting ("Perry"), licensee of Station KDLS-FM, and Blair Communications ("BC"). Counterproposals were filed by Marjorie K. and Theodore H. Mahn ("Mahns")<sup>2</sup> requesting the allotment of Channel 248A to Alta, Iowa (RM-8095) and Ames Broadcasting Company ("ABC") requesting the substitution of Channel 286C3 for Channel

296A at Ames, Iowa, the modification of Station KCCQ's license to specify the higher class channel, the allotment of Channel 296C3 to Lake City, Iowa, and the substitution of Channel 256A for Channel 296A at Denison, Iowa, and the modification of Station KDSN(FM)'s license to specify operation on the alternate Class A channel (RM-8096).<sup>3</sup> Reply comments were filed by Northwest Iowa Broadcasting Corporation ("Northwest"), Sunrise, ABC, and Perry.

2. Sunrise reiterates its intention to apply for Channel 268C3 at Blair. It also restates its commitment to reimburse the licensees of Stations KAYL and KDLS-FM for the reasonable expenses incurred in the change of their operating channel. Perry agrees to the substitution of Channel 286A for Channel 269A at Perry and the modification of Station KDLS-FM's license accordingly, contingent upon the reimbursement of expenses by Sunrise. However, it requests that the antenna reference coordinates set forth in the *Notice* be modified to specify those of its pending application.<sup>4</sup> Northwest, licensee of Station KAYL-FM, Storm Lake, also agrees to the modification of its license to specify operation on Channel 269C1 in lieu of its present Channel 268C1.

3. Sunrise seeks a non-adjacent channel upgrade from Channel 292A to Channel 268C3. In this connection, Section 1.420(g) of the Commission's Rules states that a station's authorization may not be modified in rule making to specify a non-adjacent, higher class channel, if competing expressions of interest are received absent the allotment of an additional equivalent class channel for use by such parties. Recognizing this possibility, the *Notice* proposed the allotment of Channel 247C3 to Blair to accommodate such competing expressions of interest. In response, Blair Communications has stated an intention to apply for the channel, if allotted.

4. ABC requests the substitution of Channel 286C3 for Channel 296A at Ames, Iowa, the modification of Station KCCQ(FM)'s license to specify operation on the higher class channel, and the allotment of Channel 296C3 to Lake City, Iowa, as the community's first local FM service. ABC states that upgrading Station KCCQ to Channel 268C3 could enable the station to provide service to an additional 41,397 persons within a 2,279 square kilometer (880 square mile) area. In addition, the allotment of Channel 296C3 to Lake City, population 1,841 persons,<sup>5</sup> would provide a first local transmission service to the community as well as a new reception service to an additional 43,208 persons. ABC states that it will apply for Channel 268C3, if allotted

<sup>1</sup> The communities of Ames, Alta, Denison and Lake City, Iowa, have been added to the caption.

<sup>2</sup> Although the Mahns' counterproposal was signed and served on the petitioner, they failed to include an affidavit verifying that the statements contained in the counterproposal were accurate to the best of their knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). However, in view of the fact that the Mahn's proposal can be accommodated without conflicting with any

other pending request or allotment, we believe that the failure of the petitioners to verify their pleading should not result in the possible deprivation of first local FM service to Alta. See *Stuart and Boone, Iowa*, 5 FCC Rcd 4537 (1990).

<sup>3</sup> Public Notice of the counterproposals was given on October 1, 1992, Report No. 1909.

<sup>4</sup> Pursuant to application File No. BPH-910812IH, Perry has requested that its transmitter site be changed to North Latitude 41-50-03 and West Longitude 94-02-12. Although Perry states that these coordinates reflect the station's current tower site, Commission records show that the application is still pending and that the station's licensed site is that specified in the *Notice* herein (41-49-58; 94-02-15). However, since the alternate channel proposed for use by Perry can be used at the site specified in its outstanding application, we will change the reference coordinates as requested.

<sup>5</sup> Population figures are taken from the 1990 U.S. Census.

to Ames, as well as Channel 296C3, if allotted to Lake City. To accommodate the allotments at Ames and Lake City, ABC requests the modification of Perry's Station KDLS-FM to specify operation on Channel 288A instead of Channel 286A, as proposed by Sunrise. It also requests that an *Order to Show Cause* be issued to Station KDSN(FM), Denison, Iowa, proposing the modification of its license by substituting Channel 256A for Channel 296A.

5. ABC is seeking a non-adjacent channel upgrade at Ames. However, ABC states that Lake City can obtain a Class C3 allotment only if Channel 296A is deleted from Ames. Therefore, it argues that competing expressions of interest in use of Channel 286C3 should not be accepted since the proposal constitutes an incompatible channel swap and thus is entitled to the same protection as if ABC requested an upgrade to an adjacent channel.<sup>6</sup>

6. The Mahns request the allotment of Channel 248A to Alta, Iowa, as the community's first local aural service. They state that Alta, located in Buena Vista County, is an incorporated community with a 1990 Census population of 1,820 persons. This request conflicts with that portion of Sunrise's proposal which seeks the substitution of Channel 248A for Channel 286A at Sac City. However, the Mahns state that both proposals can be accommodated by allotting Channel 265A or Channel 284A in lieu of proposed Channel 248A to Sac City. They state that Channel 265A can be allotted to Sac City with a site restriction of 15 kilometers west-southwest if the proposed channel change at Storm Lake is adopted. Channel 284A can be allotted to Sac City with a site restriction of 14 kilometers northeast. According to the Mahns, both channels can provide Sac City with the required 70 dBu city-grade coverage.

7. Northwest opposes the Mahns' counterproposal. Northwest argues that the substitute channels for Sac City, Channels 265A and 284A, each require a site restriction so severe as to "virtually guarantee" that they will not be activated. It states that the Commission requires that there must be a reasonable expectation that a usable site is available before an allotment will be made, citing *Cave City, Kentucky*, 7 FCC Rcd 1363 (1992), which cites *San Clemente, California*, 3 FCC Rcd 6728 (1988). In this case, Northwest contends that Channel 284A has a usable transmitter site area of approximately one square kilometer minus the land area occupied by two intersecting roads. The land area available for Channel 265A is larger, according to Northwest, but is still small and distant from the county's largest community. In addition, the site restriction necessary to comply with the Commission's mileage separation requirements necessitates placement of the transmitter at the outer limits from which city grade service could be provided to Sac City. Northwest points out that the Mahns do not intend to apply for the Sac City allotment. Therefore, it argues that it cannot be presumed that the Mahns

have made a determination that there are available feasible transmitter sites. In addition, Northwest contends that the allotment of either Channel 265A or Channel 284A to Sac City could also restrict the flexibility of neighboring stations to relocate their transmitters.

8. Northwest goes on to state that Buena Vista County, with a population of 19,965 persons, is already served by Station KAYL-FM at Storm Lake and Station KTFG(FM) at Sioux Rapids. Sac County, in which Sac City is located, has a population of 12,324 people but no FM stations. Therefore, it argues that it is inappropriate to allot a severely restricted channel just so that Buena Vista County can receive its third service. Northwest also states that the allotment of Channel 265A to Sac City is dependent upon Station KAYL-FM moving from Channel 268C1 to Channel 269C1. It contends that Station KAYL-FM does not have to change its operating channel unless and until Station KBWH(FM) at Blair is actually ready to go on the air on Channel 268C3. Should Station KBWH(FM) decide not to build, Northwest submits that Channel 268C1 would remain allocated to Storm Lake. Finally, Northwest contends that the counterproposal should not be considered since the Mahns failed to state an intention to apply for the substitute channel at Sac City<sup>7</sup> and to reimburse the expenses of the existing stations which must change channel to permit the Alta allotment, citing *Brookville, Pennsylvania*, 66 RR 2d 493 (1988).

9. Sunrise, in reply comments, supports the grant of all of the proposals before the Commission since alternate channels are available for use at Perry and Sac City which resolve the conflicts. It specifically supports the substitution of Channel 284A at Sac City so as to permit the allotment of Channel 248A to Alta. Sunrise argues that Northwest's concerns about the lack of usable transmitter sites are speculative and insufficient to overcome the Commission's policy of accommodating as many proposals for new and/or improved services as possible. It states that even though Northwest may oppose the Alta allotment for competitive reasons, the public interest is better served by accommodating the expressed intention to provide Alta with its first local service than by "fretting" over a channel change for an allotment which has never been activated.

10. Perry agrees to the substitution of Channel 288A for Channel 269A at Perry and the modification of Station KDLS-FM' license to specify the alternate Class A channel. However, because this channel change will be the second such change since July of 1991, Perry requests that, for a "reasonable period of time," no further requests seeking the move of Station KDLS-FM to accommodate another station's allotment be adopted.<sup>8</sup>

<sup>6</sup> Section 1.420(g)(3) of the Commission's Rules allows the modification of a station's license to a higher class channel if the proposal involves a co-channel or adjacent channel that is mutually exclusive with the existing license. The Commission has acknowledged that it will consider analogous proposals involving channel substitutions at other communities which are necessary to create the mutually exclusive relationship required under Section 1.420(g)(3), and stated our intention to consider such "incompatible channel swaps" on an individual basis. See *Modification of FM Broadcast License to Higher Class Co-Channel or Adjacent Channels*, 60 R.R. 2d 114 (1986).

<sup>7</sup> Contrary to Northwest's argument, the Commission does not

require an expression of interest in a channel allotment which is proposed as a substitute for an existing allotment when the substitution is necessary to accommodate a new allotment.

<sup>8</sup> By *Report and Order*, Station KDLS was previously ordered to move from Channel 285A to Channel 269A. See MM Docket 89-41, 5 FCC Rcd 1886 (1990). The Commission will not grant Perry's request that no further channel change be adopted for a "reasonable period of time." The Commission recognizes that changing a station's channel may be disruptive to both the station's operation and its listenership and thus will order such a change only where we find that the public interest benefits flowing from the change outweigh the benefit which comes

11. *Discussion.* As an initial matter, we find that the objections raised by Northwest are not sufficiently compelling to warrant the denial of an allotment to Alta. Northwest states that the proposed replacement of Channel 248A at Sac City with either Channel 265A or Channel 284A requires severe site restrictions which make either allotment virtually unusable. A staff engineering analysis shows that Channel 265A cannot be allotted to Sac City because terrain obstructions would prevent the entire community from receiving a 70 dBu city-grade signal. However, the staff analysis also shows that Channel 284A can be allotted to Sac City with a site restriction of 14.9 kilometers (9.3 miles) northeast and provide the required signal coverage to all of the community. We do not disagree that we are replacing substitute Channel 248A at Sac City, an allotment which would require no site restriction, with one which does impose a site restriction and thus does limit the land area available as a transmitter site. However, Northwest's study is based on the reference coordinates proposed by the Mahns which would have required a site restriction of 15.7 kilometers (9.8 miles) northeast, and thus more restrictive than the reference coordinates analyzed by the staff. Further, although the land area available for a transmitter may not be as large as that available for presently allotted Channel 286A or originally proposed 248A, Northwest has not shown that there are no sites available which would comply with the mileage separation requirements and also provide Sac City with the required signal level. It is true that the Mahns may not have explored the availability of potential transmitter sites as thoroughly as they would have if they intended to apply for the allotment. However, the Commission, at the rule making stage, is concerned with whether a theoretical site exists that would comply with our engineering requirements unlike at the application stage where the concern is the availability or suitability of a given site. *See Wilmington, North Carolina, et al.*, 6 FCC Rcd 6969 (1991). In this case, the staff's engineering study shows that the channel can be allotted at the coordinates specified herein in compliance with the Commission's minimum mileage separation requirements and all other engineering requirements. Northwest also argues that allotting a channel to Sac City with a site restriction could restrict other nearby stations from relocating their transmitters in the direction of Sac City. However, Channel 284A can be allotted to Sac City without adversely affecting any application which is now pending before the Commission. Furthermore, no station which might be affected by the Sac City allotment has commented in the proceeding. Therefore, we find that Northwest's argument as to any harm which may be caused to nearby stations is without merit. Finally, we see no reason to deny a community of its first local service where an interest in activating a channel has been expressed in order to avoid a channel substitution for a vacant allotment in a community where no interest in the allotment has been expressed.

12. We also reject ABC's claim that its counterproposal constitutes an incompatible channel swap and is thus protected from competing expressions of interest. In adopting

the rule which permits upgrades on co- and adjacent channels without allowing competing expressions of interest, the Commission stated that it will consider analogous proposals involving channel substitutions at other communities which would be necessary to create the mutually exclusive relationship required to comply with Section 1.420(g)(3) of the Commission's Rules. *See Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, supra.* As an example, the Commission contemplated a situation where a licensee on Channel 240A at community A seeks to upgrade on Channel 271C2. To do so, the licensee on Channel 240A must exchange channels with the licensee on Channel 270A in community B. The allotment of Channel 271C2 to community A must require the deletion of Channel 270A at community B and Channel 240A must be the only Class A which can be substituted at community B. Further, in order to qualify as an incompatible channel swap, the exchange of channels must be in situations where neither substitute channel is available for general application. Here, ABC does not propose to swap its current operating channel with another authorized facility but to make it available as a first local FM service at Lake City. In addition, Channel 296C3 is not the only Class C3 channel available for allotment to Lake City since the staff has found that Channel 294C3 can be allotted. Further, Channel 294C3 does not require channel substitutions at either Ames or Denison. Therefore, since a Class C3 channel is available for allotment to Lake City which does not require an existing station to change frequency, we will allot Channel 294C3 instead of Channel 296C3, as proposed by ABC. We will also modify ABC's license for Station KCCQ to specify operation on Channel 286C3. Competing expressions of interest were specifically solicited in the Public Notice announcing the filing of the counterproposal and no competing interest was expressed. *See, e.g., Sioux Center, Iowa, Sioux Falls, South Dakota*, 3 FCC Rcd 6153 (1988).

13. Accordingly, we believe the public interest would be served by substituting Channel 268C3 for Channel 292A at Blair since it could provide the community with its first wide coverage area service and enable Station KBWH(FM) to expand its coverage area, by allotting Channel 247C3 to Blair since an interest has been expressed in providing the community with its second local wide coverage area FM service, by allotting Channel 248A to Alta, as its first local FM service, by substituting Channel 268C3 for Channel 296A at Ames since it could enable Station KCCQ to expand its coverage area and by allotting Channel 294C3 to Lake City, as the community's first local FM service. The licensees of Stations KDLS-FM at Perry and KAYL at Storm Lake have agreed to the modification of their licenses to specify Channels 288A and 269C1, respectively, to accommodate the allotment of Channel 268C3 to Blair, and Sunrise has stated its intention to reimburse the affected licensees.<sup>9</sup> The substitution of Channel 284A for Channel 286A at Sac City does not require Station KAYL

from maintaining channel continuity. Here, the substitution of Station KDLS' channel enables the allotment of a wide coverage area FM service to Blair and expansion of service by Station KBWH(FM).

<sup>9</sup> Northwest states that Station KAYL does not have to change channel unless and until Station KBWH(FM) is ready to go on

the air. It goes on to state that should Station KBWH(FM) decide not to build the station on Channel 268C3, Channel 268C1, Station KAYL-FM's present channel, will remain allotted to Storm Lake and no change in frequency would be required. Northwest is incorrect. When a station is modified to another channel in rule making, the Report and Order adopting

to change channel and thus Northwest is not entitled to reimbursement from the ultimate permittee of Channel 248A at Alta.

14. Channel 268C3 can be allotted to Blair in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11.1 miles) northwest to accommodate Sunrise's desired transmitter site. Channel 247C3 can be allotted to Blair with a site restriction of 22.6 kilometers (14.1 miles) northwest to avoid short-spacings to Station KZKX, Channel 245C1, Seward, Nebraska, KDMI, Channel 247C1, Des Moines, Iowa, KPAT, Channel 247C1, Sioux Falls, South Dakota, KLRB, Channel 247C2, Aurora, Nebraska. Channel 288A can be allotted to Perry at the site specified in Station KDLS-FM's outstanding application (File No. BPH-910812IH) which is 5.5 kilometers (3.4 miles) east. Channel 269C1 can be allotted to Storm Lake at the licensed site of Station KAYL. Channel 284A can be allotted to Sac City with a site restriction of 14.9 kilometers (9.3 miles) northeast to avoid short-spacings to Stations KESY-FM, Channel 283C, Omaha, Nebraska, KKLS-FM, Channel 284C, Sioux Falls, South Dakota, and KJJG, Channel 285A, Spencer, Iowa. Channel 248A can be allotted to Alta, Iowa, with a site restriction of 1.0 kilometers (0.6 miles) northeast. Channel 286C3 can be allotted to Ames with a site restriction of 4.4 kilometers (2.7 miles) north-northwest to accommodate ABC's preferred site. Channel 294C3 can be allotted to Lake City with a site restriction of 9 kilometers (5.6 kilometers) northwest to avoid a short-spacing to a pending application (File No. BPH-910314MI) for Channel 294C2 at Grinnell, Iowa.<sup>10</sup>

15. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 2, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Alta, Iowa	248A
Ames, Iowa	281C, 286C3
Lake City, Iowa	294C3
Perry, Iowa	288A
Sac City, Iowa	284A
Storm Lake, Iowa	269C1
Blair, Nebraska	247C3, 268C3

the action modifies Section 73.202(b) of the Commission's Rules by deleting the old channel and adding the new channel to the Table of Allotments. With this *Report and Order*, Channel 268C1 is no longer allotted to Storm Lake and the Table of Allotments is modified to specify Channel 269C1 instead. Northwest is correct that Station KAYL-FM may not be required immediately to change to Channel 269C1. However, this is not because Station KAYL-FM retains any rights to the channel. Rather, Station KAYL-FM will be required to change channel at such time as the station's continued operation on its present channel prevents the activation of any other channel which meets the mileage separation requirements to Channel 269C1 but not Channel 268C1 at Storm Lake, regardless of the status

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Sunrise Broadcasting of Nebraska, Inc., for Station KBWH(FM), Blair, Nebraska, IS MODIFIED to specify operation on Channel 268C3, in lieu of Channel 292A, and the license of Ames Broadcasting Company for Station KCCQ, Ames, Iowa, IS MODIFIED to specify operation on Channel 268C3 in lieu of Channel 296A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

17. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Northwest Iowa Broadcasting Corp., for Station KAYL, Storm Lake, Iowa, IS MODIFIED to specify operation on Channel 269C1 in lieu of Channel 268C1, and the license of Perry Broadcasting Co. for Station KDLS-FM, Perry, Iowa, IS MODIFIED to specify operation on Channel 288A in lieu of Channel 269A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KAYL's license, File No. BLH-920921KE, or in Station KDLS-FM's license, File No. BLH-5066, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license File No. BLH-920921KE or File No. BLH-5066, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

of Station KBWH(FM). Furthermore, any permittee for Station KBWH would be required to operate on Channel 268 at Blair, not Channel 292.

<sup>10</sup> The coordinates for Channel 268C3 at Blair are North Latitude 41-38-52 and West Longitude 96-17-55. The coordinates for Channel 247C3 at Blair are 41-42-43; 96-17-20. The coordinates for Channel 288A at Perry are 41-50-03; 94-02-12. The coordinates for Channel 269C1 at Storm Lake are 42-38-05; 95-10-10. The coordinates for Channel 284A at Sac City are 42-30-37; 94-52-14. The coordinates for Channel 248A at Alta are 42-40-25; 95-17-25. The coordinates for Channel 286C3 at Ames are 42-04-05; 93-38-13. The coordinates for Channel 294C3 at Lake City are 42-19-08; 94-49-08.

18. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Sunrise Broadcasting of Nebraska, Inc., licensee of Station KBWH(FM), and Ames Broadcasting Company, licensee of Station KCCQ, are required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

19. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee, as follows: Northwest Iowa Broadcasting Corp., Station KAYL, 604-1/2 Lake Avenue, Storm Lake, Iowa 50588, and Perry Broadcasting Co., Station KDLS-FM, P.O. Box 548, Perry, Iowa 50220.

20. The window period for filing applications for Channel 248A at Alta, Iowa, Channel 247C3 at Blair, Iowa, and Channel 296C3 at Lake City, Iowa, will open on **August 3, 1993**, and close on **September 2, 1993**.

21. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

22. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau